



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 27, 2006

Mr. Carey E. Smith  
General Counsel  
Texas Dept of Health & Human Services  
P. O. Box 13247  
Austin, Texas 78711

OR2006-00930

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 240981.

The Texas Health and Human Services Commission (the "commission") received a request for data on "all pediatric prescriptions written under Medicaid coverage in Texas for the last 10 years" including the name of the drug prescribed, the diagnosis under which the drug was given, the age of the child, the gender of the child and whether the child was in foster care. You state that the commission does not have some of the requested information. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You claim that sections 12.003 and 21.012 of the Human Resources Code make the requested

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information confidential. Section 12.003 of the Human Resources Code provides in relevant part:

(a) Except for purposes directly connected with the administration of the department's<sup>2</sup> assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a). In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the [commission]'s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012 (commission shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients of commission's assistance programs to purposes directly connected with administration of programs); 42 C.F.R § 431.306(a) ("The [state] agency must have criteria specifying the conditions for release and use of information about [Medicaid] applicants and recipients."), (d) ("agency must obtain permission from a family or individual . . . before responding to a request for information from an outside source"); Open Records Decision No. 166 (1977). You inform us that the requested information relates to the Medicaid program established under Title XIX of the federal Social Security Act. *See* 42 U.S.C. §§ 1301 et seq. You state that release of the information at issue in this instance is not for purposes directly connected with the administration of the Medicaid program. Consequently, we agree that the commission must withhold the information at issue from disclosure under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resource Code.

You request that this office issue a previous determination allowing the commission to withhold Medicaid recipient information. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

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<sup>2</sup>We note that the former Texas Department of Human Services ("DHS") ceased operations on September 1, 2004, and that the commission now administers the Medicaid program formerly administered by DHS. *See* Texas Department of Human Services website at <http://www.dhs.state.tx.us>; see also Health and Human Services Commission website at <http://www.hhsc.state.tx.us>; Act of June 2, 2003, 78<sup>th</sup> Leg., R.S., ch. 198, 2003 Tex. Sess. Law Serv. 611.

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/krl

Ref: ID# 240981

Enc. Submitted documents

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